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SUPREME COURT OF THE UNITED STATES.

No. 180.

WASHINGTON, ALEXANDRIA, AND GEORGETOWN STEAM PACKET COMPANY, PLAINTIFFS IN ERROR,

vs.

FREDERICK E. SICKLES AND TRUEMAN COOK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

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GIDEON, Print.

Writ of Error.

UNITED STATES OF AMERICA.

The President of the United States to the Judges of the circuit court of the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you or some of you, between Frederick E. Sickles & Trueman Cook, plaintiffs, and the Washington, Alexandria and Georgetown Steam Packet Company, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the records and proceedings aforesaid to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, *and* that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court.

Issued this 11th day of February, 1858.

JNO. A. SMITH,
Clerk Circuit Court District of Columbia,
Washington county.

Citation.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Frederick E. Sickles and Trueman Cook, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the District of Columbia, for Washington county, wherein the said Washington, Alexandria and Georgetown Steam Packet Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said Washington, Alexandria and Georgetown Steam

Packet Company, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. James Dunlop, chief judge of the circuit court of the District of Columbia, this 11th day of February, 1858.

JAS. DUNLOP.

Service acknowledged.

JOS. H. BRADLEY,
Att'y for Pl'ffs.

Know all men by these presents, that we, the Washington, Alexandria and Georgetown Steam Packet Company, William Gunton and James Adams, both of the city of Washington, in the District of Columbia, are held and firmly bound unto Frederick E. Sickles and Truman Cook in the sum of twenty-five thousand dollars, current money, to be paid to the said Sickles & Cook, their certain attorney, executor, administrators or assigns: to which payment, well and truly to be made and done, we bind ourselves, our successors, heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 11th day of February, 1858.

Whereas lately, at a circuit court of the United States for the District of Columbia, sitting for the county of Washington, in a suit depending in the said court, wherein the said Sickles & Cook were plaintiffs, and the Washington, Alexandria and Georgetown Steam Packet Company was defendant, judgment was rendered against the said defendant, and having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Sickles & Cook, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Washington, Alexandria and Georgetown Steam Packet Company shall prosecute said suit with effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be null and void; otherwise to be and remain in full force and virtue.

W. GUNTON, [SEAL.]
Presd't Steam Packet Co.
W. GUNTON, [SEAL.]
JAS. ADAMS. [SEAL.]

Signed, sealed and delivered, in the presence of—
S. B. BOARMAN,
G. W. VENABLE.

Approved by the court.
True copy.
Test: JNO. A. SMITH, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of January, being the eighteenth day of the same month, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-second.

Present, James Dunlop, chief judge; the Hon'ble James S. Morsell, Wm. M. Merrick, ass't judges; Jonah D. Hoover, esquire, marshal; John A. Smith, clerk.

In the records of the proceedings of the said court, amongst others, are the following, to wit:

FREDERICK E. SICKLES and TRUMAN COOK,
use of George Mattingly,
ag't
THE WASHINGTON, ALEXANDRIA, AND GEORGETOWN STEAM PACKET COMPANY.

Be it remembered, that heretofore, to wit, on the 26th day of December, in the year of our Lord one thousand eight hundred and fifty-five, the said plaintiffs, by Joseph H. Bradley, esquire, their attorney, prosecuted and sued forth out of the circuit court the United States writ of subpœna to the marshal of the district aforesaid, directed in the words and of the tenor following, to wit:

The United States of America to the Marshal of the District of Columbia, greeting:

We command you, that you summon The Washington, Alexandria and Georgetown Steam Packet Company before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of March next, to answer unto Frederick E. Sickles and Truman Cook in a plea of trespass on the case, &c. Hereof fail not at your peril; and have you then and there this writ.

Witness James Dunlop, esquire, chief judge of our said court, at the city of Washington, the 14 day of Dec'r, anno Domini one thousand eight hundred and 55.

Issued the 26th day of Dec'r, 1855.

JNO. A. SMITH, *Cl'k.*

BRADLEY & STONE.

At which said fourth Monday of March, in the year one thousand eight hundred and forty-six, and the day of the return of the aforegoing writ, come again into court here the said plaintiffs, by their attorney aforesaid; and the marshal of the district aforesaid, to whom the said aforegoing was in form aforesaid directed, makes return thereof to the court here, "certifying that he had served the

same on James Adams, esquire, the president of said company, and summoned him to appear to said suit. And the company being called, appears in court here by James M. Carlisle, esquire, their attorney; and thereupon, on motion of the said defendants, by their attorney aforesaid, it is ruled by the court that the said plaintiffs declare against the said defendants, or judgment of the court here will be rendered against them in default thereof. Whereupon the said Frederick E. Sickles and Truman Cook, by their attorney aforesaid, pray leave of *of* the court here to imparle until the third Monday of October next, and then to declare against the said defendants; and to them it is granted. The same day is given to the said defendants.

At which said third Monday of October, in the year eighteen hundred and fifty-six, come again into the circuit court here, as well the Frederick E. Sickles and Truman Cook, by their attorney aforesaid, as the said Washington, Alexandria and Georgetown Steam Packet Company, by their attorney aforesaid; and thereupon the said plaintiffs, by their attorney aforesaid, declares against the said defendants in form following, to wit:

1st Count.

FREDERICK E. SICKLES and TRUMAN COOK
vs.
THE WASHINGTON, ALEXANDRIA AND GEORGETOWN STEAM PACKET COMPANY.

The Washington, Alexandria, and Georgetown Steam Packet Company was summoned to answer Frederick E. Sickles and Truman Cook of a plea of trespass on the case upon promises; and thereupon said plaintiffs, by Joseph H. Bradley, their attorney, complain: For that whereas, heretofore, to wit, on the eighteenth day of June, in the year eighteen hundred and forty-four, at the county aforesaid, the said plaintiffs being the owners of the patent-right for a certain machine called "Sickle's Cut-off," designed to effect a saving *of* in the consumption of fuel by steam-engines, and the said defendants being the owners of the steamboat called Columbia, running on the Potomac river and Chesapeake bay, it was mutually agreed by and between said plaintiffs and said defendants that said plaintiffs would cause one of said machines to be constructed and attached to the engine of said steamboat of defendants, as soon as the same could conveniently be done, at a cost not to exceed two hundred and fifty dollars, the cost and expense of attaching the same to be paid for out of the first savings of fuel effected by its use, and that said cut-off should be constructed and applied to said engine by the firm of T. W. & R. C. Smith, of Alexandria; and if said cut-off, when applied to said engine, should fail to effect a saving of fuel, that it should be removed therefrom at the expense of said plaintiffs. And it was also agreed, in con-

sideration thereof, that if said cut-off, when constructed and applied to said engine, should effect a saving in the consumption of fuel thereby, that said defendants would use the said cut-off on their engine on said steamboat Columbia during the continuance of the patent-right of said plaintiffs, if said boat should last so long, and would apply the value of all the first savings of fuel on board said boat effected by the use of said cut-off—in the first place, to the payment of the cost and expense of constructing and attaching said cut-off to the engine of said boat, not exceeding two hundred and fifty dollars, until the same was fully paid and satisfied; and thereafter, and after having paid said cost and expense, that said defendants would, during the continuace of said patent-right, if said steamboat should last so long, pay to said plaintiffs three-fourths of the value of the fuel saved by the use of said cut-off. And it was also agreed there and then, by and between said plaintiffs and said defendants, that the saving of fuel caused by the use of said machine, called "Sickles' Cut-off," on said steamboat should be ascertained, at such time as the said plaintiffs should desire it, in the following manner, to wit, by taking two piles of wood, each of equal quantity, and using the same—first, one pile without and then the other with the use of said cut-off, and thus to show whether the said boat would run the longest under the same circumstances with or without the use of said cut-off; and that the said proportion of savings, so as aforesaid ascertained, should be paid by said defendants to said plaintiffs weekly or monthly, or whensoever said defendants should be requested to pay the same. And thereupon the said plaintiffs, relying upon said promises and undertakings of said defendants, and at their request, at great cost, to wit, at the cost of two hundred and twenty-five dollars, did cause and procure the firm of T. W. & R. C. Smith, of Alexandria, to construct and apply to said engine of said steamer Columbia said machine, called "Sickles' Cut-off;" which said machine ever since, to wit, from the ninth day of November, A. D. 1854, continually, to the bringing of this action, hath been used by the said defendants in and upon said boat, attached to the engine thereof; and said plaintiffs aver and say, that during said period of time their said patent-right continued in full force and virtue in law. And said plaintiffs aver and say, that afterwards, on the 20th day of August, in the year 1845, at the county aforesaid, with the assent of said defendants, they made the experiment provided for in said contract, in the manner therein provided, and that said defendants were represented thereat, and that, at and by means of said experiment so conducted as aforesaid, it was ascertained that the saving effected by the use of "Sickles' Cut-off," amounted to $34\frac{175}{190}$ per cent.; and said plaintiffs say that the rate of saving by which their compensation was to be estimated was thereby established, as between said plaintiffs and defendants. And said plaintiffs say that after-

wards, to wit, on the 19th day of March, 1846, they instituted a suit at law against said defendants, in the circuit court of the District of Columbia, to recover from said defendants said plaintiffs' proportion of the savings, which had been effected by the use of said "Sickles' Cut-off" on the said steamer Columbia, up to the time of instituting said suit, and filed their declaration therein, the first count of which was on said special contract herein before set forth; and that afterwards, to wit, on the 22d day of November, A. D. 1855, a jury was duly empannelled and sworn to try the issues of fact duly joined in said cause between said plaintiffs and said defendants; and said plaintiffs say that one of the issues joined in said cause was as to the existence of said contract, as set forth in the first count of said plaintiffs' declaration in said cause, and which said contract is herein before set forth; and that afterwards, to wit, on the 7th day of December, A. D. 1855, the jury rendered a verdict in favor of said plaintiffs on the first count of their said declaration, founded on said contract as aforesaid, and the said circuit court thereupon rendered judgment in favor of said plaintiffs upon said first count of their said declaration. Said plaintiffs aver and say, that said verdict of the jury, and judgment of the court thereon, established said contract as between said plaintiffs and defendants, and that said defendants are thereby stopped to deny the same. And said plaintiffs aver that a great quantity of fuel has been saved to said defendants by the use of said "Sickles' Cut-off," on the engine of said steamboat Columbia, from the 13th day of October, in the year 1846, up to the bringing of this suit, viz., the 26th day of December, 1855, viz., the amount of nine thousand cords of wood, of great value, to wit, of the value of fifteen thousand dollars. And said plaintiffs say that they are entitled to have and recover of said defendants, as a part of said savings, a large sum of money, to wit, the sum of fifteen thousand dollars, the value of three-fourths of the fuel saved to said defendants by the use of said "Sickles' Cut-off," on the engine of said steamboat Columbia, during the period of time last aforesaid, viz., from the 13th day of October, A. D. 1846, to the 26th day of December, A. D. 1855.

2d Count.

For that whereas, also, heretofore, to wit, on the eighteenth day of June, in the year eighteen hundred and forty-four, at the county aforesaid, the said plaintiffs being the owners of the patent-right for a certain machine called "Sickles' Cut-off," designed to effect a saving in the consumption of fuel by steam-engines, and the said defendants being the owners of a steamboat called the Columbia, running on the Potomac river and Chesapeake bay, it was *naturally* agreed, by and between said plaintiffs and said defendants, that said plaintiffs would cause one of said machines to be con-

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structed and attached to the engine of said steamboat of defendants, as soon as the same could conveniently be done, at a cost not to exceed two hundred and fifty dollars, the cost and expense of attaching the same to be paid for out of the first savings of fuel effected by its use, and that said cut-off should be constructed and applied to said engine by the firm of T. W. & R. C. Smith, of Alexandria; and if said cut-off, when applied to said engine, should fail to effect a saving of fuel, that it should be removed therefrom at the expense of said plaintiffs. And it was also agreed, in consideration thereof, that if said cut-off, when constructed and applied to said engine, should effect a saving in the consumption of fuel thereby, that said defendants would use the said cut-off on their engine on said steamboat Columbia during the continuance of the patent-right of said plaintiffs, if said boat should last so long, and would apply the value of all the first savings of fuel on board said boat effected by the use of said cut-off—in the first place, to the payment of the cost and expense of constructing and attaching said cut-off to the engine of said boat, not exceeding two hundred and fifty dollars, until the same was fully paid and satisfied; and thereafter, and after having paid said cost and expense, that said defendants would, during the continuance of said patent-right, if said steamboat should last so long, pay to said plaintiffs three-fourths of the value of the fuel saved by the use of said cut-off. And it was also agreed there and then, by and between said plaintiffs and said defendants, that the saving of fuel caused by the use of said machine called "Sickles' Cut-off," on said steamboat, should be ascertained, at such time as said plaintiffs should desire it, in the following manner, to wit, by taking two piles of wood, each of equal quantity, and using the same—first, one pile without and then the other with the use of said cut-off, and thus to show whether the said boat would run the longest, under the same circumstances, with or without the use of said cut-off; and that the said proportion of savings, as aforesaid ascertained, should be paid by said defendants to said plaintiffs weekly or monthly, or whensoever said defendants should be requested to pay the same. And thereupon the said plaintiffs, relying upon said promises and undertakings of said defendants, and at their request, at great cost, to wit, at the cost of two hundred and twenty-five dollars, did cause and procure the firm of T. W. & R. C. Smith, of Alexandria, to construct and apply to said engine of said steamer Columbia said machine called "Sickles' Cut-off," which said machine ever since, to wit, from the ninth day of November, in the year eighteen hundred and forty-four, continually to the bringing of this action, hath been used by said defendants in and upon said boat, attached to the engine thereof. And said plaintiffs aver and say, that heretofore, to wit, on the nineteenth day of August, in the year eighteen hundred and forty-five, at the county

aforesaid, they gave notice to said defendants that on the next day, that is to say, on the twentieth day of August, in the year eighteen hundred and forty-five, they desired to make the experiment in said agreement mentioned, to ascertain the amount of fuel saved by the use of said "Sickles' Cut-off," and for the purpose that one of said plaintiffs would go from the city of Washington, in the District of Columbia, to the city of Baltimore, in the State of Maryland, in the said steamboat, on the said day, to wit, the 20th day of August before mentioned, for the purpose of making said experiment. And the said defendants then and there by their president did assent thereto, and did direct the officers of said boat, or some of them, to aid in conducting said experiment. And said plaintiffs further say, that one of said plaintiffs, to wit, the said Truman Cook, did, on said twentieth of August, A. D. 1845, proceed in said boat, from said city of Washington to said city of Baltimore, and did on the said voyage, with the assistance of the officers of said boat, make the said experiment, by taking two piles of wood of equal dimensions, and under like circumstances using one pile of wood without and the other pile of wood with the said cut-off in operation. The pile of wood used without the said cut-off being in operation was burned in two hours and seven minutes, the engines making twenty-one revolutions per minute, and the pile used with the Sickles' cut-off in operation lasted three hours and fifteen minute—the engine making the same number of revolutions, to wit, twenty-one per minute, showing a saving in favor of said cut-off of thirty-four and one hundred and seventy-five one hundred and ninetieth per cent.; of all of which the said defendants afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, had notice.

And said plaintiffs aver, that a great quantity of fuel has been saved to said defendants by the use of Sickles' Cut-off on the engine of said steamboat Columbia, from the thirteenth day of October, A. D. 1846, up to the time of bringing this action, viz., the 26th day of December, A. D. 1855, viz., the amount of six thousand cords of wood, of great value, to wit, of the value of fifteen thousand dollars. And said plaintiffs say that they are entitled to have and recover of said defendants, as a part of said savings, a large sum of money, to wit, the sum of ten thousand dollars, the value of three-fourths of the fuel saved to said defendants by the use of said cut-off on the engine of said steamboat of defendants during the period of time last aforesaid.

3d Count.

And whereas also afterwards, to wit, on the thirteenth day of October, A. D. 1846, at the county aforesaid, in consideration that the said plaintiffs, who were the owners of the patent right to a machine designed to effect a saving in the consumption of fuel by

steam-engines, at the special instance and request of said defendants, who were the owners of a certain steamboat called the Columbia, had before that time constructed and applied one of said machines to the engine of said boat, and had agreed that said defendants should have the use of said cut-off on the engine of said boat during the continuance of their patent right, if said boat should last so long, they, the said defendants undertook, and then and there faithfully promised the said plaintiffs to pay them for the use of the same so much money as they therefor reasonably desired to have of the said defendants, when they, the said defendants, should be thereto afterwards requested. And the said plaintiffs aver, that they reasonably deserved to have of said defendants, for the use of the same on said boat, from the 13th day of October, A. D. 1846, to the time of bringing this suit, the sum of fifteen thousand dollars, to wit, at the county aforesaid, whereof the said defendants afterwards, to wit, on the day and year last aforesaid there had notice.

And whereas also the said defendants afterwards, to wit, on the first day of December, 1845, at the county aforesaid, were indebted unto said plaintiffs in the further sum of fifteen thousand dollars, lawful money, for so much money by the said defendants before that time had and received to and for the use of said plaintiffs, and being so indebted afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, undertook and then and faithfully promised said plaintiffs to pay them the said last mentioned sum of money, when they, the said plaintiffs, should be thereunto afterwards requested.

And whereas also afterwards, to wit, on the thirteenth day of October, A. D. 1846, aforesaid, at the county aforesaid, in consideration that said plaintiffs who were the owners of the patent right for a certain machine designed to effect a saving in the consumption of fuel by steam engines, called "Sickles' Cut-off," at the special instance and request of said defendants, who were the owners of a certain steamboat called the Columbia, had before that time constructed and attached one of said machines to the engine of said boat, and had agreed that said defendants should have the use of said cut-off on the engine of said boat during the continuance of their patent right, if the said boat should last so long, the said defendants undertook and agreed to pay to said plaintiffs the cost of constructing and applying said cut-off to the engine of said boat, out of the value of the first savings effected by its use; and thereafter, and after having paid the cost of constructing and applying said cut-off to said engine, to account for and pay to said plaintiffs, weekly or monthly, or whenever they should be so requested by said plaintiffs, the three-fourths of the value of the fuel saved to the said defendants by the use of the said cut-off on said

boat, so long as the said patent right of the said plaintiffs should continue, if the said boat should last so long. And although afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, a great quantity of fuel, to wit, six thousand cords of wood of great value, to wit, of the value of fifteen thousand dollars, had been saved to said defendants by the use of said cut-off on the engine of said steamboat Columbia, from the 13th day of October, A. D. 1846, to the time of bringing this suit, yet the said defendants, not regarding their said promises and undertakings, but contriving and intending to injure and defraud the plaintiffs in this behalf, have not rendered any account of the value of the savings effected by the use of the cut-off as aforesaid. And although often requested by said plaintiffs, to wit, on the day and year last aforesaid, and often afterwards, have hitherto refused and still refuse so to do.

Yet the said defendants have not paid the said several sums of money before mentioned, or any part thereof, although often requested so to do, to wit, on the day and year last aforesaid, at the county aforesaid, and often afterwards; but the same to pay, or any part thereof, have hitherto wholly refused, to the damage of said plaintiffs in the sum of twenty thousand dollars. And therefore they sue, &c.

JOS. H. BRADLEY,
Pl'ffs Att'y.

Thereupon, on motion of the said plaintiffs, by their attorney aforesaid, it is ruled by the court here that the said defendants answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, or judgment by the court here will be rendered against them in default thereof.

Whereupon the said defendants, by their attorney aforesaid, defend the force and inquiry, when, and so forth, and pray leave to imparle until the fourth Monday of March next; and to them it is granted; and the same day is given to the aforesaid plaintiffs.

At which said fourth Monday of March, in the year 1857, come again into court here, as well the said plaintiffs as the said defendants, by their attorneys aforesaid; and the said defendants, by their attorney aforesaid as before, defends the force and injury, when, and so forth, and says that they did not assume upon themselves in manner and form as the aforesaid plaintiffs above against them have complained; and of this they put themselves upon their country; and the said plaintiffs in like manner, and so forth. Therefore let a jury thereon appear before the court here, on the third Monday of October next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c., the same day is given to the said parties then and there, &c.

At which said third Monday of October, in the year eighteen

hundred and fifty-seven, came again into court here, as well the said plaintiffs as the said defendants, by their attorneys aforesaid. Thereupon further process of and upon the premises aforesaid, by consent of the said parties by their attorneys, and by order of the court here, is continued until the third Monday of January next.

And now, to wit, the said third Monday of January, in the year one thousand eight hundred and fifty-eight, comes again into court here, as well the said plaintiffs, by their attorney aforesaid, as the said defendants, by their attorney aforesaid. And the said plaintiffs as to the common counts, to wit, Nos. of his said declaration, freely acknowledges here in court that he will not further prosecute against the said defendants as to the said several provisions and undertakings in those counts mentioned; therefore let the said defendants go quit thereof, &c. Whereupon, for trying the issue aforesaid, that is on the first and second counts in the declaration, it is ordered by the court here that twelve persons from the panel of petit jurors returned to the court here by the marshal of this District be called; who being called came, to wit: Samuel Hanson, Thomas Cornock, Thomas Sylvester, Francis Mattingly, Selby Parker, Hy. H. McPherson, jr., James S. Barnard, James Ward, Lawrence Levy, James Cull, Edward Krouse and Jno. J. Joyce, who being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said defendants did assume upon themselves in manner and form as the said plaintiffs above against them have declarad, and they assess the damages of the said plaintiffs, sustained by occasion of the non-performance of the promise and assumption aforesaid, to the sum of sixteen thousand three hundred and eighty-eight dollars and twenty-five and one-fourth cents. Therefore it is considered by the court here, that the said plaintiffs recover against the said defendants, as well the said sum of sixteen thousand three hundred and eighty-eight dollars and twenty-five and one-fourth cents, as aforesaid in form aforesaid assessed to be sustained, by occasion of the non-performance of the promise and assumption aforesaid, as the sum of thirty-seven dollars and nine cents by the court here unto them the said plaintiffs on their assent adjudged for their costs and charges by them about their suit in that behalf laid out and expended; and the said defendants in mercy, and so forth.

Test: JNO. A. SMITH, *Clk.*

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the said defendants, by their attorney aforesaid, filed in court here the following bills of exceptions, to wit:

Def'ts' 1st Bill of Exceptions.

SICKLES & COOK
vs.
WASH. ALEX. AND GEO'TOWN STEAMBOAT COMP'Y. } No. 168.

On the trial of this cause, the record in extenso in the cause mentioned in said plaintiffs' count No. 1, (it being admitted that the parties in said suit are the same as the parties in this suit,) not having been made out by the clerk, the plaintiffs, to maintain the issue on their part, offered to read to the jury in lieu thereof the docket entries and minutes in said case, together with the writ, declaration, plea, verdict and judgment, (copied in page 41,) as constituting the same, the said case being between the same parties, as follows:

[Here insert copies of the writs, declaration, plea, verdict, and the rule for judgment, and the judgment as it would appear when extended.]

To the admissibility of all which evidence the defendants object. The court overruled the said objection, and allowed the said evidence to be given. And thereupon the defendants except to the said ruling, and pray the court to sign and seal this their first bill of exceptions; which is accordingly done, this 4th day of February, in the year 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. W. MERRICK. [SEAL.]

Def'ts' 2d Bill of Exceptions.

SICKLES & COOK
vs.
STEAM-PACKET COMPANY. } No. 168.

And on the further trial of this cause, the plaintiff offered in evidence certain certified copies of papers, as follows: copied in page 31, &c., &c.

To the admissibility of which evidence, under either of the said counts, the defendants object; but the court overruled the objection, and permits the said evidence to be given to the jury, instructing them that the same is competent evidence under each of the said counts.

And thereupon the defendants except to the said ruling of the court as to each of the said counts respectively, and pray the court to sign and seal this their second bill of exceptions; which is done accordingly, this 4th day of February, in the year 1858.

[SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. W. MERRICK. [SEAL.]

Case No. 168.—*Bill of Excep. No.* 3.

On the further trial of this cause, the plaintiffs having given the evidence set out in the aforegoing bills of exceps., Nos. 1 and 2, now called James Harper, a competent witness, and proved by him that the said machine, called Sickles' Cut-off, was attached to the said steamer in and prior to the year 1846, when he was mate of the said steamer. That the witness has no knowledge of the fact whether it continued attached in the years 1847 and '8, but in Feb'y, 1849, witness became the captain of that steamer, and so remains ever since; and the said cut-off was attached to the engine, and so continued during all the time mentioned in the declaration.

And therefore the defendants ask the said witness whether, during the time aforesaid, the said machine always in fact worked so as to produce any saving of fuel, and what saving?

To which question the plaintiffs object, and the court sustains the said objection, and refuses to allow the said question to be answered by the witness.

To which ruling of the court the defen'ts except, and pray the court to sign and seal this their 3d bill of exceptions; which is accordingly done, this 4th February, 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. W. MERRICK. [SEAL.]

Case No. 168.—*4th Bill.*

On the further trial of this cause, the plaintiffs insisting that the evidence set out in the bill of exception No. 1 constitutes an estoppel against the defendants to inquire into the fact of saving or no saving during the time mentioned in the declaration, now offer evidence, by competent witnesses, to show the quantity and value of wood in fact consumed on board the said steamer during the time aforesaid.

The court having required the plaintiffs to state for what purpose and to what issue the same is applicable, the plaintiffs, by their counsel, state to the court that the said evidence is offered under both counts in the said declaration, for the purpose of showing the quantity of wood consumed and the cost thereof on board the said steamboat during the period embraced in and covered by the said counts, and to which the rate of saving established by the said experiment under the said contract is to be applied, in order to show by calculation the amount of such saving and the amount of said plaintiffs' three-fourth parts thereof.

To the admissibility of which evidence the defendants object, but the court overrules the objection, and allows the evidence to be given to the jury. Whereupon the defendants except, and pray

Def'ts' 1st Bill of Exceptions.

SICKLES & COOK
vs.
WASH. ALEX. AND GEO'TOWN STEAM-BOAT COMP'Y. } No. 168.

On the trial of this cause, the record in extenso in the cause mentioned in said plaintiffs' count No. 1, (it being admitted that the parties in said suit are the same as the parties in this suit,) not having been made out by the clerk, the plaintiffs, to maintain the issue on their part, offered to read to the jury in lieu thereof the docket entries and minutes in said case, together with the writ, declaration, plea, verdict and judgment, (copied in page 41,) as constituting the same, the said case being between the same parties, as follows:

[Here insert copies of the writs, declaration, plea, verdict, and the rule for judgment, and the judgment as it would appear when extended.]

To the admissibility of all which evidence the defendants object. The court overruled the said objection, and allowed the said evidence to be given. And thereupon the defendants except to the said ruling, and pray the court to sign and seal this their first bill of exceptions; which is accordingly done, this 4th day of February, in the year 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. W. MERRICK. [SEAL.]

Def'ts' 2d Bill of Exceptions.

SICKLES & COOK
vs.
STEAM-PACKET COMPANY. } No. 168.

And on the further trial of this cause, the plaintiff offered in evidence certain certified copies of papers, as follows: copied in page 31, &c., &c.

To the admissibility of which evidence, under either of the said counts, the defendants object; but the court overruled the objection, and permits the said evidence to be given to the jury, instructing them that the same is competent evidence under each of the said counts.

And thereupon the defendants except to the said ruling of the court as to each of the said counts respectively, and pray the court to sign and seal this their second bill of exceptions; which is done accordingly, this 4th day of February, in the year 1858.

[SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. W. MERRICK. [SEAL.]

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Case No. 168.—*Bill of Excep. No.* 3.

On the further trial of this cause, the plaintiffs having given the evidence set out in the aforegoing bills of exceps., Nos. 1 and 2, now called James Harper, a competent witness, and proved by him that the said machine, called Sickles' Cut-off, was attached to the said steamer in and prior to the year 1846, when he was mate of the said steamer. That the witness has no knowledge of the fact whether it continued attached in the years 1847 and '8, but in Feb'y, 1849, witness became the captain of that steamer, and so remains ever since; and the said cut-off was attached to the engine, and so continued during all the time mentioned in the declaration.

And therefore the defendants ask the said witness whether, during the time aforesaid, the said machine always in fact worked so as to produce any saving of fuel, and what saving?

To which question the plaintiffs object, and the court sustains the said objection, and refuses to allow the said question to be answered by the witness.

To which ruling of the court the defen'ts except, and pray the court to sign and seal this their 3d bill of exceptions; which is accordingly done, this 4th February, 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. W. MERRICK. [SEAL.]

Case No. 168.—*4th Bill.*

On the further trial of this cause, the plaintiffs insisting that the evidence set out in the bill of exception No. 1 constitutes an estoppel against the defendants to inquire into the fact of saving or no saving during the time mentioned in the declaration, now offer evidence, by competent witnesses, to show the quantity and value of wood in fact consumed on board the said steamer during the time aforesaid.

The court having required the plaintiffs to state for what purpose and to what issue the same is applicable, the plaintiffs, by their counsel, state to the court that the said evidence is offered under both counts in the said declaration, for the purpose of showing the quantity of wood consumed and the cost thereof on board the said steamboat during the period embraced in and covered by the said counts, and to which the rate of saving established by the said experiment under the said contract is to be applied, in order to show by calculation the amount of such saving and the amount of said plaintiffs' three-fourth parts thereof.

To the admissibility of which evidence the defendants object, but the court overrules the objection, and allows the evidence to be given to the jury. Whereupon the defendants except, and pray

the court to sign and seal this their fourth bill of exceptions; which is accordingly done, this 4th Feb'y, 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. W. MERRICK. [SEAL.]

Defendants' 5th Bill of Exceptions.

SICKLES & COOK vs. STEAM-PACKET CO. } No. 168.

On the further trial of this cause, the plaintiffs having given the evidence set forth and referred to in the aforegoing bills of exception, and insisting that the proceedings set out in the said bill of exception of No. 1 operated as an estoppel as to all and singular the matters recited and averred in the first and second counts of their declaration, (the others having been non-pross'd,) and having also given the evidence set out and contained in the defendants' 6th bill of exceptions, except amount claimed as the value of the ¾ of savings, as to which it was admitted and ruled by the court that it was open to the defendants to prove that the quantity of wood burnt and the cost thereof was other than as proved by the plaintiffs. And the said plaintiffs having closed their case—

The defendants now offer evidence, tending to disprove generally and in specific detail all and every of the recitals and averments in the said first and second counts contained, and particularly to prove that no such contract was made as is therein declared to have been made by parol, nor was any such contract made otherwise howsoever. And further to prove that the so called "experiment" mentioned in the said counts was not made in pursuance of any such contract, and was fraudulent, and not a true and precise exponent of the capacity of the said cut-off to save the consumption of fuel, either at the time the said experiment was made, or at any time during the period covered by the said declaration; and that in fact, for the whole period covered by the said declaration, there has been no saving produced thereby in the consumption of fuel, but that the necessary consumption of fuel on board the said steamer for the navigation thereof has been the same amount and quantity as under like circumstances before the application of the said cut-off, and that by reason of divers facts and circumstances, (offered to be given in evidence) the said so called "experiment," even if the same had been fairly and bona fide made, was merely illusory, and did not and could not show the rate of saving of fuel under all circumstances and during all the time, and on each and every "trip," a voyage of the said steamer, without regard to weather, freight, the condition of the hull and of the engine, and of the said cut-off, or the quality of the wood in fact used and burned in the navigation thereof; and offered to give evidence respecting

each of the said points of fact, (in order to ascertain the "actual savings," if any,) to wit, the weather, the freights, the condition of the hull and of the engine, and of the said cut-off, the wear and tear of the said cut-off, and the quality of the wood used and burned in the navigation of the said steamer, and to prove by experts, professionally practised and skilled in the matter of steam engines and navigation by steam, that such experiment did not and could not show the rate of actual savings, without regard to the said offered facts and circumstances, and also to show, in point of fact, whether there were any actual savings and to what amount during the period covered by the declaration. And further offered evidence tending to impeach and discredit the testimony given on the said former trial between these parties to establish the said contract; and also to show that the said verdict was in fact rendered upon the whole proof and allegations in the said cause as a general verdict, and not as affirming the facts specially stated in the count upon which the plaintiff caused the judgment to be entered as aforesaid, and was in point of fact rendered, as the same by the minutes and docket entries aforesaid purports to be, upon the declaration and issues generally, and not upon the said special count specially; and that evidence was in fact given on the said former trial tending to support the general counts in the declaration in that case.

And further offered evidence, that the nominal plaintiffs, Cook and Sickles, after the said pretended contract, sold all their right in the premises at what they estimated the fair value thereof, to wit, for $400, to George Mattingly, the party for whose use this suit is prevented.

But the plaintiffs object to all and every part of the said offered evidence, and the court refused to allow the same or any part thereof to be given to the jury; and thereupon the defendants except, and pray the court to sign and seal this their 5th bill of exception, which is accordingly done, this 4th February, 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. W. MERRICK, [SEAL.]

Defendants' 6th Bill.

SICKLES and COOK
vs.
THE STEAM PACKET COMPANY.

On the further trial of this cause, the plaintiffs, to maintain the issue on their part joined, having read in evidence to the jury the record set out and contained in said defendants' first bill of exceptions, made part hereof, further gave evidence tending to show that the defendants, from the said 13th day of October, in the year 1846, to the 26th day of December, in the year 1855, used and

employed the said machine on board the said steamboat Columbia, and during the said period she consumed seven thousand seven hundred three and three-fourth cords of pine wood, (7,703¾,) costing.....$23,522 07
7,703¾, costing 20,180 00

Making.....$43,703 14
Add ½, being ⅓ of whole amount..... 21,851 50

$65,554 50

Leaving ⅓..... $21,851 50

Plaintiffs' share of savings, ¾..... 16,389 13
Defendants' " " ¼..... 5,462 37

$21,851 50

And they claim to recover of defendants the said sum of sixteen thousand three hundred eighty-nine dollars and thirteen cents, as their agreed proportion of said savings; and also the patent and assignment thereof. See 2d bill of exceptions, made part hereof.

And thereupon the defendant prayed the court to instruct the jury as follows: That upon the whole evidence as aforesaid, it is for the jury to find whether there was in fact any saving of fuel during the period covered by the declaration produced by the use of the said cut-off on board the said steamer, and what was the amount and value thereof, and what proportion of that amount and value is due to the plaintiff for the time aforesaid; which instruction the court refused to give, and to the refusal the said defendants except, and pray the court to sign and seal this their 6th bill of exceptions, which is done accordingly, this 4th day of February, in the year 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. W. MERRICK, [SEAL.]

Defendants' 7th Bill of Exceptions.

And thereupon, and after the whole evidence as aforesaid had been given to the jury, the plaintiffs pray the court to instruct the jury, on the whole evidence aforesaid, that by the terms of the contract between the said parties, and the said finding of the jury and judgment of the court thereon, the saving of the wood by the use of said machine is fixed at one thirty-four and $\frac{175}{190}$ per cent. of the amount which would have been consumed without the use of the said machine, and the plaintiffs are entitled to recover in this action three-fourths of such sum as the jury shall find was saved to the defendants at that rate of saving.

Which instruction the court gave as prayed, and thereupon the defendants except, and pray the court to sign and seal this their seventh bill of exceptions; which is accordingly done, this 4th day of February, 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. M. MERRICK, [SEAL.]

The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In witness whereof I, Joseph Holt, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this third day of February, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-second.

[SEAL.]

J. HOLT.

Articles of agreement made and entered into this eleventh day of January, in the year one thousand and forty-two, between Truman Cook, of the city, county, and State of New York, of the first part, and Frederick Ellsworth Sickles, of the same city, county, and State, of the second part, witnesseth: that whereas said Sickles has discovered and invented a new method of effecting a cut-off steam at any desired stroke of the piston of steam-engines; and whereas said Sickles is desirous of securing said invention or discovery by letters patent for the United States of America; and whereas it will require some considerable expenditure of time and money to obtain letters patent for said invention in the United States of America:

Now, therefore, it is understood and agreed, on the part of the party of the second part, that for and in consideration that the party of the first part pays the necessary expenses, and devotes the necessary time for the purpose of securing by letters patent the said invention or discovery in the United States of America, excepting the making of the necessary models, which expense said Sickles shall pay and use all due diligence in causing them to be made, the said party of the second part, his heirs, administrators or assigns, agrees by these presents to sell, assign, transfer, and set over to the said party of the first part, his, heirs, administrators or assigns, one half of the interest in any patent obtained for a cut-off by him, or any improvement which the said party of the second part may make in the mode of cutting off steam in the operation of steam-engines.

And further, it is mutually understood and agreed by the parties to these presents, that in all moneys, emoluments, profits or pay, arising from the sale or otherwise of my invention or improvement,

made for or upon any plan of operation or constructing apparatus for the purpose of cutting off steam, by the said Sickles, party of the second part, shall be divided and owned equally between the parties to these presents—share and share alike.

In witness whereof we, the parties to these presents, have set our hands and seals, the day and year above written.

TRUMAN COOK, [L. S.]
FREDERICK ELLSWORTH SICKLES. [L. S.]

Witnessed by J. DE WITT BRINCKERHOFF.

Received and recorded, April 22d, 1852.

The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of letters patent issued to F. E. Sickles on the twentieth day of May, eighteen hundred and forty-two.

In testimony whereof I, Joseph Holt, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this third day of February, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-second.

J. HOLT.

No. 2,631.

The United States of America to all to whom these letters patent shall come:

Whereas Frederick Ellsworth Sickles, New York, has alleged that he has invented new and useful improvements in the manner of constructing the apparatus for lifting, tripping, and regulating the closing of the valves of the steam-engines, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvements, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvements, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Frederick Elsworth Sickles, his heirs, administrators or assigns, for the term of fourteen years from the twentieth day of May, one thousand eight hundred and forty-two, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvements, a description whereof is given in

the words of the said Frederick Elsworth Sickles in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made [L. S.] patent, and the seal of the patent office has been hereunto affixed.

Given under my hand, at the city of Washington, this twentieth day of May, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States of America the sixty-sixth.

DAN'L WEBSTER,
Secretary of State.

Countersigned and sealed with the seal of the Patent Office.

HENRY L. ELLSWORTH,
Commissioner of Patents.

The Schedule referred to in these Letters Patent, and making part of the same.

To all whom it may concern:

Be it known, that I, Frederick Elsworth Sickles, of the city of New York, in the State of New York, have invented certain improvements in the manner of constructing and arranging the apparatus for lifting and tripping the valves of steam engines, and by which the steam can be more readily cut off, at any desired portion of the stroke, than by the means heretofore adopted, and also an improved water reservoir and plunger, which serve to prevent the slamming of the valves in closing, and consequently to preserve them in good working order for a great length of time.

In the accompanying drawing AA, fig. 1 represents a valve box, containing the puppet-valves, which are to be lifted and closed, the construction of this part being such as is well known to engineers and machinists. B is the valve stem, passing through a stuffing box C, on the bonnet D, of the valve box. The valve stem is to be raised by the lifter E, which is acted on in the usual way. FF is a spring which is attached to the shaft G of the lifter, and the outer ends F of which embrace the sides of the valve stem B. The upper end of this stem is flattened, or has projecting edges or feathers aa, which, when the valve is being lifted, rest upon the upper edges of the spring FF, where said feathers terminate; but when this spring is opened, the stem will be no longer sustained by it, and it will consequently descend, and the valve or valves attached to it will be closed; by means of the apparatus which I have devised, the spring F may be opened, and the stem B, with its valves, may be tripped at any time during the ascent or descent of the lifter, and the steam may consequently be cut off at any part of the stroke of the piston. To effect this, there is a standard H, rising vertically from the valve box or bonnet C, so as that its upper flat end shall be nearly in contact with

the outer ends of the springs FF. This standard sustains an adjustable sliding piece I, which may be shifted to any desired height, and then held in place by means of a set screw a^1. Upon the face of this sliding piece there are two projecting wedge-formed pieces or inclined planes bb, which serve to open the ends E of the springs, and thus to liberate the stem B. In the position in which the piece I is represented in this figure, the ends of the spring F would catch against the outside of the pieces bb in ascending, and they would be separated; but in descending, the ends of said springs would catch against the insides of the wedges or planes bb, and they would consequently be forced inwards, and would not be opened; but were the sliding piece I, with its wedges or inclined planes, reversed, the spring would then not be opened by the ascent, but would be opened by the descent of the stem. When the stem is liberated or tripped at its greatest rise, the steam will be cut off at half stroke; when tripped at one-half its rise in ascending, the steam will be cut off at one-fourth of the stroke, and when at the same point in descending, it will be cut off at three-fourths of the stroke; and so on, of any intermediate point. The face of the standard H may be graduated, so as instantaneously to set the cut-off at any required point, by means of the set screw.

In order to cause the stem B to descend instantaneously, when the spring FF is opened, I cause a spring to bear upon it, which spring is situated on the upper side of the lifter, to which it is attached by one end, whilst its other end bears upon the stem. In fig. 2, which is a vertical section through the lifter and the valve stem cc, is a spring, which is fastened to the lifter at d, whilst its outer end bears on an offset d^1 on the stem, and serves to give it a descending impulse the moment it is freed from the spring F^1. Fig. 3 is a top view of the lifter, the bonnet, and some of their appendages, as designated by the letters of reference.

J, fig. 1, is the water reservoir attached to the lower side of the valve box A. This, and the parts within it, are shown in section in fig. 4, for the purpose of clearly exhibiting their construction and arrangement; B is a continuation of the valve stem, and this has affixed to it on its lower end a plunger or piston K. The interior of the reservoir J is cylindrical, and it has within it a cup or secondary reservoir, which may be raised or lowered by means of a graduating screw ee, said screw being furnished with a nut f, by which it is to be held in place. When the valve stem B descends, the plunger K enters the cup or secondary reservoir L, into the upper cylindrical part of which it passes freely, and to such depth as may be found necessary, which is determined by means of the graduating screw ee. The reservoir J, is to contain water, oil, or other fluid, say to two-thirds of its height, more or less; through the plunger K, holes gg are represented, as being made for the passage of water; and h is a valve-like piece, which

slides up and down on the lower end of the stem B. This part of the apparatus, however, may be varied in its form in numerous ways—the intention being to cause the water to offer a determined degree of obstruction to the descent of the plunger, and to admit of this being regulated. This I have some times done, by making the plunger K a flat disk, with a sufficient space between it and the cavity of the cup L for the passage of a portion of water, sufficient to allow of the descent of the plunger, whilst it shall be so obstructed as to take off the force of the blow of the valve. I have in fact essayed the action of the plunger, and of the parts within which it operates, in different forms, and in all with good effect—that which I have represented being one of the best. An opening, furnished with a stopper, may be made through the reservoir, as at I, to supply water when requisite. By means of this apparatus the valves may be made to shut so silently as scarcely to be heard, whilst the retardation is so perfectly graduated as not to be accompanied by any sensible loss of time, as it takes place in the last moment of their descent only.

Having thus fully described the nature of my improvements in the apparatus for lifting and tripping the valves of steam-engines, and of thereby cutting off the steam at any required part of the stroke, and also of my improved apparatus for regulating the closing of the valves, what I claim therein as new, and desire to secure by letters patent, is, first: The manner in which I have combined and arranged the valve stem B, the spring F on the lifter, the adjustable sliding piece I, with its wedges or inclined planes, and their immediate appendages, so as to co-operate with each other, and to effect the tripping of the valves and the cutting off of the steam, substantially in the manner set forth.

I also claim the manner of regulating the closing of the valves, and of effectually preventing them from slamming, by means of a water reservoir, furnished with a piston or plunger, attached to the lower end of the valve stem, and operating within an adjustable cup or secondary reservoir, so as to effect the purpose intended, upon the principle and substantially in the manner herein described and made known.

FREDERICK ELSWORTH SICKLES.

Witnesses:
W. JAY HASKETT,
WM. M. B. SICKLES.

Docket Entries and other papers referred to in Defendant's 1st Bill of Exceptions, page 21.

October Term, 1855.

FREDERICK E. SICKLES and TRUEMAN COOK
vs.
THE WASHINGTON, ALEXANDRIA AND GEORGETOWN STEAM PACKET CO.
} No. 39.—Trials.

Mandate from supreme court.

Nar, non-asst., and issue.

22d November, jury found verdict for plaintiffs. Damages, $1,695 79, with interest from 16th March, 1846. Verdict rendered 7th December.

14th December. Judgment for plaintiffs on the first count in the declaration.

1855, December 14th. Appeal bond, writ of error, citation, &c. Mandate from supreme court, certifying the docketing and dismissing said writ of error, with costs, on 19th Dec. 1856.

Capias ad respondendum issued in the above case in the usual form.

Nar.

Nar in the above case, in the words and of the tenor following, to wit:

FREDERICK E. SICKLES and TRUEMAN COOK
vs.
THE WASHINGTON, ALEXANDRIA AND GEO'TOWN STEAM PACKET CO.

The Washington, Alexandria and Georgetown Steam Packet Company was summoned to answer unto Frederick E. Sickles and Trueman Cook in a plea of trespass on the case upon promises; and thereupon the said plaintiffs, by Joseph H. Bradley, their attorney complain: for that whereas, heretofore, to wit, on the eighteenth day of June, in the year eighteen hundred and forty-four, at the county aforesaid, the said plaintiffs, being the owners of the patent right for a certain machine called "Sickles' Cut-off," designed to effect a saving in the consumption of fuel by steam-engines, and the said defendants being the owners of a certain steamboat called the Columbia, running on the Potomac river and Chesapeake bay, it was mutually agreed, by and between said plaintiffs and said defendants, that said plaintiffs would cause one of said machines to be constructed and attached to the engine of said steamboat of defendants, so soon as the same could conveniently be done, at a cost not to exceed two hundred and fifty dollars—the cost and expense of attaching the same to be paid for out of the first saving of fuel effected by its use; and that said "cut-off" should be constructed and applied to said engine by the firm of T. W. & R. C. Smith, of Alexandria; and if said "cut-off," when applied to said engine, should fail to effect a saving of fuel, that it should be removed therefrom at the expense of said plaintiffs.

And it was also agreed, in consideration thereof, that if said "cut-off," when constructed and applied to said engine, should effect a saving in the consumption of fuel thereby, that said defendants would use said "cut-off" on their said engine in said steamboat Columbia during the continuance of the patent right of

said plaintiffs, if said boat should last so long, and would apply the value of all the first savings of fuel on board said boat effected by the use of said cut-off in the first place to the payment of the cost and expense of constructing and attaching said cut-off to the engine of said boat, not exceeding two hundred and fifty dollars, until the same was fully paid and satisfied; and thereafter, and after having paid said cost and expense, that said defendants would, during the continuance of said patent right, if said steamboat should last so long, pay to said plaintiffs three-fourths of the value of the fuel saved by the use of said cut-off. And it was also agreed then and there, by and between said plaintiffs and said defendants, that the saving of the fuel caused by the use of said machine called "Sickles' Cut-off" on said steamboat should be ascertained at such time as said plain. should desire it, in the following manner, to wit, by taking two piles of wood, each of equal quantity, and using the same—first, one pile without and then the other with the use of said cut-off—and thus to shew whether the said boat would run the longest under the same circumstances with or without the use of said cut-off; and that the said proportion of earnings so as aforesaid ascertained should be paid by said defendants to said plaintiffs, weekly or monthly, or whensoever said defendants should be requested to pay the same. And thereupon the said plaintiffs, relying on said promises and undertakings of said defendants, and at their request, at great cost, to wit, at the cost of two hundred and twenty-five dollars, did cause and procure the firm of T. W. & B. C. Smith, of Alexandria, to construct and apply to said engine of said steamer Columbia said machine called "Sickles' Cut-off," which said machine ever since, to wit, from the 9th day of November, in the year eighteen hundred and forty-four, continually to the bringing of this action, hath been used by said defendants in and upon said boat, attached to the engine thereof. And said plaintiffs aver and say that heretofore, to wit, on the eighteenth day of August, in the year eighteen hundred and forty-five, at the county aforesaid, they gave notice to said defendant that on the next day—that is to say, on the twentieth day of August, in the same year, they desired to make the experiment in said agreement mentioned, to ascertain the amount of fuel saved by the use of said "Sickles' Cut-off," and for that purpose, that one of said plaintiffs would go from the city of Washington, in the District of Columbia, to the city of Baltimore, in the State of Maryland, in the said steamboat, on the said day, to wit, the twentieth day of August before mentioned, for the purpose of making said experiment; and the said defendants, then and there, by their president, did assent thereto, and did direct the officers of said boat, or some of them, to aid in conducting said experiment. And said plaintiffs further say, that one of said plaintiffs, to wit, the said Truman Cook, did on said twentieth day of August, A. D. 1845, proceed in said boat

from said city of Washington to said city of Baltimore, and did on the said voyage, with the assistance of the officers of said boat, make the said experiment, by taking two piles of wood of equal dimensions, and under like circumstances using one pile of wood without and the other pile of wood with the said cut-off in operation. The pile of wood used without the said cut-off being in operation was burned in two hours and seven minutes, the engine making twenty-one revolutions per minute, and the pile used while the Sickles' Cut-off was in operation lasted three hours and fifteen minutes, the engine making the same number of revolutions, to wit, twenty-one per minute, showing a saving in favor of said cut-off of thirty-four and one hundred and seventy-five one hundred and nineteenth per cent.—of all of which the said defendants afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, had notice And said plaintiffs aver that a great quantity of fuel has been saved to said defendants by the use of said "Sick*ells* Cut-off" on the engine of said steamboat Columbia from said ninth day of November, in the year eighteen hundred and forty-four, to said nineteenth day of March, in the year eighteen hundred and forty-six, to wit, the amount of one thousand cords of wood, of great value, to wit, of the value of twenty-five hundred dollars. And said plaintiffs say that they are entitled to have and recover of said defendants, as a part of said savings, as well the said sum of two hundred and twenty-five dollars, for the cost of constructing and applying said cut-off to the engine on said steamboat, as also the further sum, to wit, the sum of nineteen hundred and seventy-five dollars, the value of three-fourths of the fuel saved to said defendants (after deducting the cost of making and applying said cut-off as aforesaid) by the use of said cut-off on the engine of said steamboat of defendants, during the period of time aforesaid, to wit, from said 9th day of November, A. D. 1844, to said 19th day of March, A. D. 1846. And whereas, also, afterwards, to wit, on the first day of March, in the year eighteen hundred and forty-six, at the county aforesaid, in consideration that the said plaintiffs, who were the owners of the patent right to a certain machine designed to effect a saving in the consumption of fuel by steam-engines, at the special instance and request of said defendants, who were the owners of a certain steamboat called the Columbia, had before that time constructed and applied one of said machines to the engine of said boat, and had agreed that said defendants should have the use of said cut-off on the engine of said boat during the continuance of their patent right, if said boat should last so long, they, the said defendants, undertook and then and there faithfully promised the said plaintiffs to pay them so much money as they therefore reasonably deserved to have of the said defendants, when they, the said defendants, should be thereunto afterwards requested. And the said plaintiffs aver, that they

reasonably deserved to have of said defendants the further sum of five thousand dollars, to wit, at the county aforesaid, whereof the said defendants, afterwards, to wit, on the day and year last aforesaid, had notice. And whereas, also, the said defendants afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, were indebted unto said plaintiffs in the further sum of five thousand dollars, lawful money, for so much money by the said defendants before that time had and received to and for the use of said plaintiffs, and being so indebted, afterwards, to wit, on the day and year aforesaid, undertook and then and there faithfully promised said plaintiffs to pay them the said last mentioned sum of money, when they, the said defendants, should be thereunto afterwards requested.

And whereas, also, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration that said plaintiffs, who were the owners of the patent right for a certain machine designed to effect a saving in the consumption of fuel by steam-engines, at the special instance and request of said defendants, who were the owners of a certain steamboat called the Columbia, had before that time constructed and attached one of said machines to the engine of said boat, and had agreed that said defendants should have the use of said cut-off on the engine of said boat during the continuance of their patent right, if the said boat should last so long, the said defendants undertook and agreed to pay to said plaintiffs the cost of constructing and applying said cut-off to the engine of said boat, to wit, the sum of two hundred and twenty-five dollars out of the value of the first savings effected by its use; and thereafter, and after having paid said sum of two hundred and twenty-five dollars, the cost of constructing and applying said cut-off to said engine, to account for and pay to said plaintiffs, weekly or monthly, or whenever they should be so requested by said plaintiffs, the three-fourths of the value of the fuel saved to said defendants by the use of the said cut-off on said boat, as long as the said patent right of said plaintiff should continue, if the said boat should last so long. And at the afterwards, to wit, on the day and year last aforesaid, at the county , a great quantity of fuel, to wit, one thousand cords of wood, of great value, to wit, of the value of twenty-five hundred dollars, had been saved to said defendants; yet the said defendants, not regarding their said promises and undertakings, but contriving and intending to injure and defraud the plaintiffs in this behalf, have not rendered any account of the value of the savings effected by the use of the cut-off as aforesaid; and altho' often requested by said plaintiffs, to wit, on the day and year last aforesaid, and often afterwards, have hitherto refused and still refuse so to do; yet the said defendants have not paid the said several sums of money before mentioned, or any part thereof, altho' often

requested so to do, to wit, on the day and year last aforesaid, at the county aforesaid, and often afterwards, but the same to pay, or any part thereof, have hitherto wholly refused, to the damage of said plaintiffs in the sum of five thousand dollars; and therefore they sue, &c., &c.

JOS. H. BRADLEY,
Pl'ffs' Att'y.

And the said docket entries referred to in defendants' 1st bill of exceptions, being extended, will appear as follows:

Plea of Non Ass't.—Issue Joined.

Whereupon the said defendants, by their attorney aforesaid, defend the wrong and injury, when, and so forth, and say that they did not assume upon themselves in manner and form as the aforesaid plaintiffs above against them have declared; and of this they put themselves upon the county; and the aforesaid plaintiffs, by their attorney aforesaid, in like manner, and so forth. Therefore let, &c.

Verdict.

Whereupon a jury being duly empanelled and sworn to say the truth of and upon the premises aforesaid, upon their oath do say, that the said defendants did assume upon themselves in manner and form as the aforesaid plaintiffs above against them have declared, and they assess the damages of the said plaintiffs, sustained by occasion of the non-performance of the promise and assumption aforesaid, to the sum of sixteen hundred and ninety-five dollars and seventy-nine cents, current money, with interest from 16th March, 1846.

Motion for Judg't.—Judgment.

Whereupon the said plaintiffs, by their attorney aforesaid, pray judgment against the said defendants upon the first count in the declaration in and upon the verdict aforesaid, by the jurors aforesaid given in the form aforesaid; therefore it is considered by the court here that the said plaintiffs recover against the said defendants, on the said first count in the declaration aforesaid, as well the sum of sixteen hundred and ninety-five dollars and seventy-nine cents, current money, with interest from sixteenth of March, eighteen hundred and forty-six, the damages aforesaid, by the jury aforesaid in form aforesaid, assessed to be sustained, by occasion of the non-performance of the promise and assumption aforesaid, as the sum of dollars by the court here unto them the said plaintiffs on their assent adjudged, for their costs and charges by them about their suit in this behalf laid out and expended; and the said defendants in mercy, &c.

And whereas afterwards, to wit, on the 11th day of February,

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1858, the said defendant, by its attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the *of the* record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, are hereby transmitted to the said Supreme Court accordingly.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, this 15th day of Dec'r, 1858. [L. S.]

JNO. A. SMITH, *Cl'k.*

Filed 23d Dec'r, 1858.